IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3228 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAILASH @ KALLU CHAMANLAL ZALTE

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. S.G. Mehta, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel on behalf of the petitioner and learned A.G.P. Mr. S.T. Mehta for the respondents nos.1,2 and 3.

1. The detention order dated 12-4-1999 passed by the respondent no.2-Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (" PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate three prohibition cases dated 14-3-1999, 3-4-1999 and 7-4-1999 were registered against the petitioner DCB and Nashabandi (North) Police Station, Ahmedabad and in each case Indianmade foreign liquor was seized from the possession of the petitioner. The petitioner was arrested and was released on bail. However, on 9-4-1999 he was arrested in respect to a case registered vide CR no.192/99 and had remained in judicial custody.

The grounds of detention further indicate that two witnesses on assurance of their anonymity have supplied information against the petitioner on 10-4-1999 disclosing the incidents dated 25-3-1999 and 30-3-1999 respectively.

3. That in consideration of the aforesaid material the detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that before passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy of opposing and/or claiming cancellation of bail available under Section 437(5) of the Cr.P.C. That on the date of passing of the order, the petitioner was in judicial custody in respect of offence registered vide CR no.192/99 at Nashabandi Police Station, and yet, the detaining authority has not considered the aspect of claiming cancellation of bail. Thus, on account of non application of mind , the subjective satisfaction arrived at by the detaining authority while passing the order of detention stands vitiated and the order of detention is

invalid.

5. It is noteworthy that in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT reported in 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Sec.437(5) of the Cr.P.C. to claim cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction rendering the detention order bad in law.

6. On scrutiny of papers, it appears that the detaining authority was aware of the fact that the petitioner was in judicial custody when proposal was considered by him. However, neither the grounds of detention nor the contemporaneous record disclose any fact from which inference could be drawn that the detaining authority has considered the less drastic remedy to prevent the petitioner from continuing his alleged prejudicial activity before passing the impugned order. Under the circumstances, I am constrained to hold that the impugned order is rendered invalid on account of non application of mind on the party of the detaining authority.

7. As the petition succeeds on the aforesaid ground alone it is not necessary to consider and decide, the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 12-4-1999 passed by the respondent no.2-Commissioner of Police Ahmedabad against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Kailash alias Kallu Chamanlal Zalte is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

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